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**SUPREME COURT  
OF THE  
STATE OF CONNECTICUT**

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**S.C. 19493**

**STANDARD OIL OF CONNECTICUT, INC.**

**v.**

**ADMINISTRATOR, UNEMPLOYMENT COMPENSATION ACT**

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**REPLY BRIEF OF THE PLAINTIFF-APPELLANT,  
STANDARD OIL OF CONNECTICUT, INC.**

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FOR THE PLAINTIFF-APPELLANT,  
STANDARD OIL OF CONNECTICUT, INC.

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## ARGUMENT

### I. THE TRIAL COURT ERRED IN FAILING TO REVIEW THE ENTIRE RECORD.

Defendant-Appellee, Administrator of the Unemployment Compensation Act, contends that the filing of a timely Motion to Correct Findings by Plaintiff-Appellant, Standard Oil of Connecticut, Inc., does not alter the standard of judicial review applied by the trial court in reviewing the Employment Security Appeals Division-Board of Review's ("Board") findings. Defendant contends that Practice Book § 22-9(b) governs the trial court's review; limiting the trial court to a determination of whether the Board's decision was not arbitrary, capricious or contrary to law. See Practice Book § 22-9(b); *United Parcel Service, Inc. v. Adm'r, Unemployment Comp. Act*, 209 Conn. 381, 385 (1988).

In doing so, Defendant disregards the relevant legal authority setting forth the trial court's scope of review where a motion to correct findings *is not timely filed*, and, thereby distinguishing it from the trial court's authority to review the Board's findings when, in fact, a motion to correct findings *is* timely filed pursuant to Practice Book § 22-4. See, e.g., *Davis v. Adm'r, Unemployment Comp. Act*, 155 Conn. App. 259, 263 (2015) ("*In the absence of a motion to correct pursuant to Practice Book § 22-4, this court looks to whether there was any evidence to support the conclusions reached by the board.*" [emphasis added]).

In the absence of a timely motion to correct, the trial court's review is limited by the provisions set forth in Practice Book § 22-9. See *Mayo v. Adm'r*, 136 Conn. App. 298, 302 (2012) ("[a] plaintiff's failure to file a timely motion [to correct] the board's findings in accordance with [Practice Book] § 22-4 prevents further review of those facts found by the board. . . . In the absence of a motion to correct the findings of the board, the court is not entitled to retry the facts or hear evidence."). Practice Book § 22-9 does not, however,

govern the standard of review to be applied by the trial court where a timely and procedurally proper motion to correct *is* filed. Accordingly, the trial court need not limit itself to the Board's findings and credibility determinations but, instead, is permitted to review the whole of the record evidence when evaluating the Board's determinations.

**II. THE TRIAL COURT ERRED IN DETERMINING THAT  
INSTALLERS/TECHNICIANS WERE UNDER PLAINTIFF'S CONTROL.**

Defendant contends that the trial court properly sustained the Board's interpretation of the ABC test, specifically Prong A, as there is a sound basis to find that Plaintiff controlled the installers/technicians.

First, the trial court failed to perform its own analysis of the record evidence and, instead, merely restated and/or deferred to the Board's erroneous conclusions.

Second, and contrary to Defendant's contention, the record evidence undisputedly shows *no supervision or inspection* by Plaintiff, as is necessary in order to establish *control* over the installers/technicians. See *Latimer v. Adm'r*, 216 Conn. 237, 248 (1990) ("The fundamental distinction between an employee and an independent contractor depends upon the existence or nonexistence of the right to control the means and methods of work. . . . The decisive test is who has the right to direct what shall be done and when and how it shall be done?" [citations omitted; internal quotation marks omitted]); see also *Darling v. Burrone Bros, Inc.*, 162 Conn. 187, 195 (1972) ("[A]n independent contractor is one who, exercising an independent employment, contracts to do a piece of work according to his own methods and without being subject to the control of his employer, except as to the result of his work."). Where, as here, there is no evidence in the record to support a finding that Plaintiff supervised or inspected the worked performed by the installers/technicians, it

is simply illogical that (and wholly unsupported by record evidence) the installers/technicians were under Plaintiff's control.

### **CONCLUSION**

For all the foregoing reasons, Plaintiff respectfully requests that the Court reverse the trial court's judgment and remand the case to the trial court with direction to render judgment sustaining Plaintiff's appeal.

**PLAINTIFF-APPELLANT, STANDARD  
OIL OF CONNECTICUT, INC.**

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**CERTIFICATION PURSUANT TO PRACTICE BOOK § 62-7**

In accordance with Practice Book § 62-7, I hereby certify that the foregoing Reply Brief of Plaintiff-Appellant conforms to the formatting requirements set forth in Practice Book § 67-2; that the font is Arial size 12; and that a copy of the foregoing Brief of Plaintiff-Appellant has been served upon the following by first class mail, postage prepaid, this 13<sup>th</sup> day of April, 2015:

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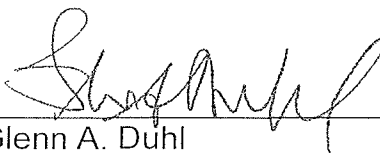
  
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**CERTIFICATION PURSUANT TO PRACTICE BOOK § 67-2(h)**

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure §67-2(h):

(1) The electronically submitted brief and appendix has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and

(2) The electronically submitted brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law.

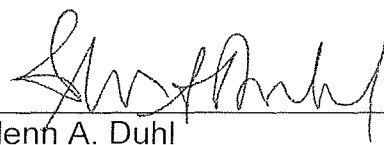
  
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**CERTIFICATION PURSUANT TO PRACTICE BOOK § 67-2(i)**

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure §67-2(i):

- (1) A copy of the brief and appendix has been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with P.B. §62-7; and
- (2) The brief and appendix being filed with the Appellate Clerk are true copies of the brief and appendix that were submitted electronically pursuant to P.B. § 67-2(g); and
- (3) The brief and appendix have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law; and
- (4) The brief complies with all provision of this rule.

  
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